SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 356

STEPHEN ROBLEY EVANS, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 141

JOSEPH ROBERT STEVEN BROSSARD, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 142

MICHAEL KENNETH HARRIS, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*.

No. 145

BRIAN RANDOLPH FLESCH, *Petitioner*,

vs.

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No. 149

ROBERT LAWRENCE DILLON, *Petitioner*,

vs.

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No. 151

MOSS DAVID POSNER, *Petitioner*,

vs.

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No. 284

PETER AUGUSTUS BENDER, *Petitioner*,

vs.

UNITED STATES OF AMERICA, *Respondent*

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR REHEARING

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PETITION FOR REHEARING

TO THE SUPREME COURT OF THE UNITED STATES:

Come now the petitioners, by their attorney, and file this, their consolidated Petition for Rehearing of the Orders heretofore entered by this Court denying each of their petitions for a writ of certiorari.

Subsequent to the filing of each of the Petitions for a Writ of Certiorari this Court held in abeyance decision on each of these pending decision in *Ehlert* v. *United States,* No. 120 October Term, 1970. The Solicitor General recognized, in the Memorandum For The United States In Opposition he filed in each case, that the petitioner presented a question sufficiently similar to *Ehlert* to warrant deferring action.

Ehlert was decided April 21, 1971

On May 17, 1971 the Court made an order, in each of the seven petitioners' cases, denying certiorari.

Petitioners respectfully represent to the Court that the decision in *Ehlert* is based on an improvident evaluation of the controlling fact and petitioners believe that the Court will welcome this, their presentation of fact and argument, as can be amplified if a rehearing is granted.

POINT ONE

Ehlert Should Be Reviewed. Ehlert Explicitly Turned on a Factual Assumption That Now Appears to Be Without Basis-in-Fact.

This Court said in *Ehlert*:

> "We are assured, however, by a letter included in the briefs in this case from the General Counsel of the Army to the Department of Justice, that present practice allows presentation of such claims and that there

> thus exists no possibility that last crystallizers will find themselves without a forum in which to press their claims. *Our conclusion in this case is based upon that assurance.*" 91 S.Ct. 1319, 1324-1325. (Italics supplied)

A. There is overwhelming judicial pronouncement of "facts", in context, that shows this "assurance" does not comport with reality, among other things that late crystallizers discover that the military will not lend its ears to them and that they truly are without a forum.

B. Additionally, counsel attaches to this petition his affidavit that relates his own experience in this area of military conduct. It shows that other and most serious aberrations are frequently present, so frequently that counsel has no hesitancy in presenting this affidavit against the hearsay "assurance" based on nameless, faceless informants.

A.

There Is Overwhelming Judicial Opinion That the Factual Basis for This Court's Decision Is Unfounded and That the Language of Both the DoD 1300.6 and the AR 635-30 Is Uniformly Considered Plain, and That There Is No Ambiguity, and It Must Be Followed.

All judicial experience supports this claim of petitioners. If the Court intends to overrule all the courts below on this point as it has already done in one area of *Ehlert* [with respect to those judges who support the uncontrollableness of conscience in relation to the "crystallization" doctrine] it is respectfully suggested that an explicit pronouncement would be helpful, as in *Estep* v. *United States,* 327 U.S. 114 where the concurring opinion of Mr. Justice Frankfurter cataloged such an explicit repudiation of all Court of Appeals judges, but one (f. 1, pp. 138-139).

We present, in this portion of our petition, the determinations of over two dozen courts that support our thesis. They contradict the "assurance" passed on to this Court by the General Counsel of the Army.

What governs procedures in the Army? The ARs, the army regulations. How much weight should the Court give a letter from the General Counsel, based on reports to him, augmenting the record?

On a battlefield a recognized means of communication, in small units is "Pass the Word." If the General Counsel adds "I'm Passing the Word" then a little more weight is to be given his good offices. In army officer groups a well recognized means of communicating is "Pass the Word."

But what has been, and what *is*, the practice of the army in our context? A little history is desirable for the light it throws.

In conscientious objector matters, *before* the 1968 amendment to DoD 1300.6, Pass the Word resulted in sabotage to the AR 635-20 as is to be seen from counsel's attached affidavit, ¶7. The sabotage is why the 1968 amendment was made by the Secretary of Defense.

Since the record may be augmented by hearsay (from sources deemed reliable) we invite attention to our affidavit, attached to this petition. In the context of the argument being now made we quoted the following portion of the affidavit:

The Central Committee for Conscientious Objectors is an organization largely operated by Quakers, and one that has had the respect of all concerned: Pentagon, Selective Service System, historic peace churches, etc. It has had a vast quantity of experience in these conscientious ob-

jector matters for a generation. In its publication "Handbook, for Conscientious Objectors, Eighth Edition, Third Printing, December, 1966, re DoD 1300.6, we read:

> "Although many men were discharged on grounds of conscience during 1964 and 1965, since the spring of 1966 virtually all applications have been denied regardless of merit." [82]

In its Ninth Edition, Second Printing, January, 1968 it saw no reason to alter the above statement and repeated it verbatim.

In its Eleventh Edition, September, 1970 it reported "About 70% of the applications for noncombatant status and about 20% of the applications for CO discharge are approved. Some unsuccessful applicants are discharged on other grounds." [93]

Evidently, the 1968 Amendment to the DoD improved the situation. What brought about the amendment and what were its new provisions?

1. Whereas, in 1964 and 1965 "many" of applicants for an AR 635-20 discharge were successful, Pass the Word reduced it to denials of "virtually all applications" in 1966 and 1967.

See counsel's affidavit of how this was done.

2. This sabotage, and the attendant outcry and pressure on the Pentagon brought the 1968 DoD 1300.6 amendment. *Thereafter* (1) the applicant's commanding officer was not to be his hearing officer; (2) a knowledgeable officer, 03 (captain) or higher was to be the hearing officer and (3) the applicant could have private counsel at the 03 Hearing. These changes clearly meant that the Department of Defense wanted the applicant to have a fair hearing.

The following, recent court opinions emphasize our claim that the standards for discharge are governed by the plain and clear mandate of DoD 1300.6 and AR 635-20 *and also show* that for some reason, despite the amended DoD 1300.6, a considerable proportion of the military 03 hearings are still conducted (1) by officers *in the chain of command* [forbidden], (2) officers *not* knowledgeable [forbidden]; (3) and that the courts *uniformly* have used the plain standard of the DoD and the AR namely, that the conscientious objections must not have become "fixed" before the enlistment or induction ceremony.

[These cases are in alphabetical order; all italics is supplied]

Bachman v. *Bradley*, No. 2673 (W.D. Mo. Jan. 5, 1971), 3 SSLR 3948

> "And further, he states:
>
> > *'In the past months* of my active duty service, *I have recognized* that the realities of Army life and functions *are irrevocably in conflict* with my convictions and beliefs.' " [3948]

Baker v. *Laird*, 316 F.Supp. 1, N.D. Calif. (1970)

> ". . . *the army could deny* an application for discharge to one claiming to be a conscientious objector where his application reveals that the grounds and beliefs adduced in support thereof *are identical with those shown to have pre-existed* induction. . . ." [4]

United States ex rel. Barr v. *Resor*, No. 23815 (D.C. Cir. March 31, 1971) 3 SSLR 3999:8

> "*Barr never submitted a claim* for exemption from all military service *to his Selective Board. The Army Board's determination* that Barr's application was governed by paragraph 3b(2) *of AR 635-20 was* therefore without basis in fact and habeas corpus was properly granted." [3999:10]

Bates v. *Commander, etc.*, 413 F.2d 475 (1969) 1 Cir.

> "The Commandant's initial findings implicitly attack the petitioner's sincerity. But by holding that petitioner's present claim is inconsistent with his prior voluntary enlistment, the Commandant puts him in a 'hanged if he does, hanged if he doesn't' predicament. *Under DoD Directive 1300.6 IV B2, conscientious objection will not be considered unless it arose after* induction or enlistment. By the Commandant's reasoning, therefore, petitioner's claim cannot be considered if it arose prior to his enlistment and is evidence of insincerity if it arose afterwards. By the force of this logic, no member of the armed services could ever qualify as a conscientious objector." [478]

Bohnert v. *Faulkner*, 6 Cir., 438 F.2d 747 (1971)

> ". . . the Department of Defense provides for in-service discharge for conscientious objectors and requires that *such beliefs must have been acquired after* the enlistee entered the service, the timing of the request for discharge supports no more than an inference insufficient alone to constitute a basis in fact for doubting sincerity." [754]

Bortree v. *Resor*, D. of Col. 1970, 316 F.Supp. 93

> "In accordance with Army Regulation No. 635-20, the petitioner was interviewed by . . . Captain H. J. Nitko[1], an officer in the Army *who is knowledgeable* in policies and procedures relating to conscientious objector matters; [f. 1-1. 'Originally Captain Thomas M. Duszynski had interviewed the petitioner, but he was disqualified by Headquarters, Department of the Army, since he was in the petitioner's *chain-of-command.*']"

Bortree v. *Resor*, No. 24607 (D.C. Cir. Mar. 2, 1971) 3 SSLR 3788

> "Moreover, all indications are that *these officers did not have legally sufficient grounds for their recommendations.* Captain Nadwodny was *Bortree's unit*

commanding officer at Fort Dix and presumably had some contact with him, but he did not interview Bortree concerning his application for discharge." [3792]

United States ex rel. Brooks v. *Clifford,* 400 F.2d 700 (1969) 4th Cir.

"Indeed, the administrative procedures were devised for the very purpose of permitting the assertion of a claim of conscientious objection . . . *when the objection was not formulated until after* military service had begun." [707]

Cohen v. *Laird,* No. 69-1085 (D. S.C. June 26, 1970) 3 SSLR 3875

"Yet, it was *during this very period* of his basic training that he asserts *his convictions 'crystallized.'*" [3877]

Application of Corvell, 307 F.Supp. 209, N.D. Calif. (1969)

". . . *preclude granting discharges* to those . . . whose beliefs *pre-dated* but were not claimed prior to *active duty.*" [212]

Donham v. *Resor,* 2 Cir., 436 F.2d 751 (1971)

[On the requirement that the *Hearing Officer be knowledgeable* only one opinion is known to counsel *where the decision turned on this,* the Court finding that the Hearing Officer (a Colonel Gleason, at West Point) was *not knowledgeable in context.*] [754]

Goodwin v. *Laird,* 317 F.Supp. 863, N.D. Calif. (1970)

". . . he has adequately explained how and why *his beliefs became fixed after* entry to the service." [866]

Gordon v. *Resor,* S.D.N.Y. 323 F.Supp. 268 (1970)

"The armed forces naturally focus their attention on conscientious objection *crystallizing after induction,* leaving cases of earlier crystallization to the jurisdic-

tion of the Selective Service System. Ehlert v. United States, 422 F.2d 332 (9th Cir. 1970); Hammond v. Lenfest, 398 F.2d 705 (2d Cir. 1968); United States v. Gearey, 368 F.2d 144, 149-150 (2d Cir. 1966); cert. denied 389 U.S. 959, 88 S.Ct. 335, 19 L.Ed.2d 368 (1967); DoD 1300.6, supra." [270]

Grossman v. *Fallwell*, No. 21429 (D. Md. Nov. 28, 1969) 3 SSLR 3977

"All three of the line officers then (Captain Smith, Captain Clark and Lieutenant Colonel Gettings) concurred in the following critical finding:

1. That petitioner was sincere,

2. That his convictions were motivated by religious beliefs, and

3. That *they became fixed after he went in the Army.* In the face of those conclusions reached by those Army officers who were closest to petitioner, and who had personal contact with him, it is indeed difficult to understand how the Review Board could make diametrically opposed findings." [3979]

United States ex rel. Healy v. *Beatty*, 424 F.2d 299, 5th Cir. (1970)

". . . the objection itself *must so manifest itself and not exist prior to entry on active duty.*" [302]

Helwick v. *Laird*, 5 Cir., 438 F.2d 959 (1971)

"Rather, the requirement of AR 635-20 (3) (b) is that the objection itself—the objection to participation in war in any form—*must become fixed only after entry into the Army.*" [966]

Keil v. *Seaman*, D. Md., 314 F.Supp. 816 (1970)

"Nor does this Court find any basis in fact for concluding that Keil's beliefs were not sincerely reached and held, *or that they did not become crystallized and fixed until after* his induction into the Army." [822]

Kepple v. *Laird*, 319 F.Supp. 1342, D. of C. (1970)

After citing AR 635-20, ¶2b on page 1344 the court concluded:

> "There is no showing that Kepple was under any compulsion to enlist in the Army and *no evidence* to overcome his claim that his convictions as to *conscientious objection had not matured at that time.*" [1345]

La Manna v. *Laird*, W.D. Tex., 322 F.Supp. 1289

> "The case of United States ex rel. Healy v. Beatty, supra, is in point. There it was argued that Healy's religious beliefs did not change and did not 'develop subsequent to entry into the active military service.' In fact, Pvt. Healy conceded this. However, this loses sight of the fact that 'the Regulations speak of the development of conscientious objection to the participation in war "in any form" *after induction*'; that is to say, participation in such noncombatant service as the Medical Corps." [1292]

Lovallo v. *Resor*, No. 71C48 (E.D. N.Y. Feb. 4, 1971), 3 SSLR 3874

> "His experiences in the Army, according to his statements, served to increase his adversion [sic] to violence and warfare. The personal contacts he made and the exposure to new points of view in the 26th Army Band had a further significant impact or his thinking: '. . . [G]radually *my conscience assumed a new depth of commitment* to the beliefs that I had long before internalized.' AHBCA-BA at p. 6. He became active in the Staten Island Peace Coalition which along with the reported events at Mylai further deepened his commitment." [3874]

McMahan v. *Laird*, S.D. Cal., 320 F.Supp. 485 (1970)

> *After citing* DoD 1300.6 and Bupersnote 1900 dated August 24, 1970 the court concluded "Clearly, petitioner has more than satisfied his burden. . ." [489]

O'Connor v. *McKean*, No. 70-93 N.D. Ala. (May 5, 1970), 3 SSLR 3498

> "Army Regulations 635-20 2.b. (1) provides for consideration of applications for discharge when the conscientious objection develops subsequent to entry upon active military service, but *specifically excludes from consideration* requests based solely on conscientious objection *which existed, but not claimed, prior* to induction. This same philosophy expressed in the comparable Selective Service Regulations has been approved by the Courts. Keene v. United States, supra; Nellons v. United States, 1 SSLR 3144, 399 F.2d 295 (5th Cir. 1968). There is no reason the Army Regulation should not be given the same treatment." [3500]

Polsky v. *Wetherill*, 438 F.2d 132, 10th Cir. (1971)

> ". . . Polsky was in fact a sincere conscientious objector but that his beliefs in such regard *had not crystallized during military service* but were existent at the time of Polsky's voluntary enlistment." [133]

Rabbito v. *Larson*, No. 70-572, N.D. Calif. (Aug. 19, 1970), 3 SSLR 321

> ". . . *hearing officer denied* petitioner's claim because his application is based solely on conscientious objection *which existed but was not claimed prior* to his coming into military. . . . Petitioner's application in some detail describes how and why his beliefs became fixed after entry to the service." [3212]

United States ex rel. Sheldon v. *O'Malley*, 420 F.2d 1344, C.A. D.C. (1969)

> "The general policy is stated to be that *consideration will be given* to separation requests '*when* such conscientious objection *develops subsequent to entry* into the active military service.'" [1345]

United States v. *Sigmon*, CM 416356 (Board of Review, U.S. Army, Jan. 2, 1968), 1 SSLR 3054

> "The only factual questions . . . (1) Did the appellant actually attempt to apply for a discharge; and (2) Did his beliefs arise *subsequent* to his entry on active duty." [3055]

Stehling v. *Casey*, No. 70-C-104 (W.D. Wis. Jan. 22, 1971), 3 SSLR 3912

> "He stated that his views *had not begun to crystallize until* he had *been activated* as a National Guard member for riot duty on the University of Wisconsin campus. He stated that he was a Roman Catholic at the time of the application, that he had been raised a Catholic and had attended 'a seminary for three years,' but that 'the full impact of the [Christian] concept' of the brotherhood of man had 'never really dawned' on him until the guard duty during the campus disturbance. He referred to a sermon on brotherhood and to certain experiences during his attendance at a National Guard summer camp. He said that 'attending the seminary for three years deepened my religious beliefs,' but that his conscientious objection had not solidified until years later, shortly before the filing of his application." [3912]

Talford v. *Seaman*, 306 F.Supp. 941, D. Md. (1969)

> ". . . he did not realize the incompatability of his religious beliefs and war in any form, until after his entry into the service."
>
> * * *
>
> "There remains the *issue* of whether Talford's views *became fixed before entry* into the service." [945]

POINT TWO

The Army Can't Be Counted on to Follow the Guidelines of Its General Counsel.

Army practice, in context, is often far different from even the printed regulations; also, relief thereafter encounters built-in, unnecessary dead-ends.

1. "Knowledgeable" Hearing Officers [a requirement of DoD 1300.6 and repeated in AR 635-20] are not always assigned to conduct the "03 Hearings." See Affidavit of Counsel attached hereto, made part hereof by reference and marked Appendix "A", first several pages.

2. Administrative relief opportunity after the 03 Hearing is almost a mockery. Court relief from arbitrary decision is unnecessarily hazardous because records turn out to be inadequate-to-poor.

a. "Reporting" must be done at the expense of the applicant, if and when permitted and tape recording is now prohibited. See Affidavit of Counsel attached hereto, made part hereof by reference and marked Appendix "A", next several pages.

b. Completely favorable reports of the "03 Hearing Officer" have been arbitrarily rejected by superior officers who never saw the applicant. See Affidavit of Counsel attached hereto, made part hereof by reference and marked Appendix "A", pages 5 and 6.

c. On the other hand relief opportunity from the Selective Service System denials is readily available, and is granted when indicated. See Affidavit of Counsel attached hereto, made part hereof by reference and marked Appendix "A", pages 7 and 8.

Assuming it is concluded that the above listed arguments are considered sufficiently supported by the affidavit and by the reported cases we believe it follows either

that the military remedy relief route is devoid of fairness to inductees, or, in the alternative that a no-man's land appears to exist. Therefore a rehearing is now justified on the proposition that the civil court remedies should be left available to late-filing conscientious objectors.

POINT THREE

Other Grounds and Some Unique to Individual Petitioners.

After the decisions below in all petitioners' appeals, some of the avalanche of case law that the last 15 months has witnessed either (1) crystallized in several areas, favorable to contentions of these petitioners or (2) is approaching such a crystallization, meaning that this Court itself now has pending some of such matters for decision. Perhaps remand is the solution.

Evans, No. 356:

This petitioner, and nearly all the others have the following to aid them:

One: It has become established in their jurisdiction that where a Selective Service registrant's prima facie claim for a new classification is rejected, the local and/or appeal board must state a valid reason. *U. S.* v. *French*, 429 F.2d 391 (July 6, 1970) 9th Cir.

Evans' complete Selective Service file was the government's sole evidence. It, like a considerable percentage of files of that period, shows that no explicit reason was given for the rejection of his claims [Gov. Ex. p. 104].

Assuming that the government makes no attempt to controvert our following statement (1) that one or more prima facie claims for deferred classifications were made and (2) that no valid reason was given for rejection we urge that his petition, and that of the others, presents plain

error and that a reversal is required. Rule 52 (b) Fed. C.Cr.P., Cf. *Howze* v. *United States*, 9 Cir. (1969), 409 F.2d 27, 28.

Two: It has become established that a registrant's claim, otherwise prima facie, is not outside the law because some, or all, of his bases for conscientious objection are not religious. *Welsh* v. *United States*, 90 S.Ct. 1792 (June 15, 1970).

At Evans' Appearance Before Local Board, on July 11, 1967 no reason for rejecting his claim was stated; the inference, from the questions asked (Sheet 104 of his Selective Service file is the board clerk's account) was that he wasn't considered religious.

Three: Today, certain other defenses are approaching a national decision.

a. Evans' petition involves the right to counsel at the agency proceedings, and especially at hearings.

   This Court, in *Weller* v. *United States*, No. 77, October Term, 1970 appears to consider this a good point, by its remand

b. Evans' petition involves the right to witnesses at hearings. This point is present for, at his above-referred to July 11, 1967 hearing the board stated his witness could not come in.

Posner, No. 151:

What was said above, for Evans, applies to this petitioner, too. Additionally,

1. His local board clearly inferred it did not consider him "religious" [Ex. 183-211, their account of the meeting with the board]

   Welsh, supra changed the law on this, while Dr. Posner's case was pending in this Court.

2. *Mulloy* v. *United States,* 398 U.S. 410 (1970), re reopening applies.

Flesch, No. 145:

This petitioner, additionally, has a *de facto* reopening situation; his claim was "reviewed" [Ex. 36] *Miller* v. *United States,* 9 Cir., 1967, 388 F.2d 973.

Harris, No. 142:

This petitioner, like some of the others, was prejudiced by the "no counsel permitted" point he raised in ¶ numbered 10 of his Motion for Judgment of Acquittal.

Bender, No. 284 and *Brossard,* No. 141:

These petitioners have all the above points, raised by their individual Motions for Judgment of Acquittal.

Dillon, No. 149:

In addition to the above this man's unique-to-him no-physical-inspection point is now aided by *United States* v. *Brown,* 3 SSLR 3794, 9 Cir., Feb. 17, 1971.

We believe we have disposed of the *validity* of the "assurance" given by the Army's General Counsel in Point One and Point Two, above.

A.

We now present facts and argument to remove, what we respectfully assert, is a related misconception in the Court's opinion, one stated in the same paragraph as its explicit reliance on the Army General Counsel's "assurance." The opinion says:

> "As for the absence of any no man's land, the pertinent military regulations are somewhat inconsistent in their phrasing, perhaps because of the sharp division among the court of appeals."

First, we argue that to the military there is nothing inconsistent in the AR's phrasing.[1]

We read these subsections of the regulation, as the military have always read them as meaning:

1. Sub (a) says "consideration will be given. . ." [only] "when such objection develops subsequent to entry. . ."

2. Sub (b) says: A man who didn't timely present existing conscientious objector belief to his draft board is S.O.L., the army's oral characterization. We translate this S.O.L. expression to mean: Surely out of Luck.

Second, the synopses of the 30 court opinions, *supra,* involving over two score judges plus our own affidavit show the military practice and give added support to our "First" argument, immediately above, that no ambiguity exists.

B.

A parallel consideration of the last two versions of the afore-quoted portion of AR 635-20 shows that the Army does try to pay lip service to this Court's pronouncements.

Attention is invited to the AR 635-20 dated 31 July, 1970. It is headed:

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1. The AR's provisions we refer to are set forth in the opinion's footnote 10. Subparagraphs a and b of ¶3, we submit, are merely repetitious. We italicize to emphasize our reading.

"10. See Army Regulation No. 635-20, ¶3:

'a. *Consideration will be given* to requests for separation based on bona fide conscientious objection to participation in war, in any form, *when* such objection *develops subsequent* to entry into the military service.' "

PERSONNEL SEPARATIONS
CONSCIENTIOUS OBJECTION

Effective 15 August 1970

This revision is necessary to reflect the recent change from "religious beliefs" as the basis for requesting separation from the service for conscientious objection to "deeply held moral, ethical or religious beliefs."

This heading is obviously a prompt and good start toward implementation of *Welsh* v. *United States*, 90 S.Ct. 1792 (June 15, 1970) *but*, when we turn the first page for details under ¶ "4 . . . Procedure. . .

"(1) General Information. . ." [we come to]

"(2) *Religious Training or beliefs held.*

(*a*) A description of the nature of belief which is the basis of claim.

(*b*) Explain how, when, and from whom or from what source the applicant received the training and acquired the belief which is the basis of claim."

We submit this demand for details [with the word *"religious"* in the heading for the sub-paragraphs] is coercive and misleading, and in substance gives the anxious applicant for separation the same Procrustean bed as did the pre-*Welsh* version of the AR, dated 27 May 1968.

Perhaps the military may change the AR to conform to *Ehlert* (even as the 1968 version did belatedly bow to *Seeger* v. *United States*, 85 S.Ct. 850 (1965)) by omitting (a) of (2) [which had read "Do you believe in a Supreme Being"] and substituting the current question "(2) (a) A description of the . . . ."

We submit that conjectures about the future are out of place.

We call the current AR 635-20 coercive and misleading because *Welsh removed* a showing of "religious" training and belief as a necessity for qualifying whereas the current AR certainly implies that the nature of the belief, and its source, better be religious, or else. . .

Finally, we believe that no conscientious objector should be expected to go into the Army to get out. We have heard of no one, since the prescient and desperate Professor Billings,[2] who could allow himself to follow such a procedure.

CONCLUSION

1. The Selective Service System affords a fairer remedy to selectees than the military and is a better equipped administrative agency for determining conscientious objections.

2. Also, until the military regulations are changed to conform to the recent expression of the army's General Counsel there has existed, and presently exists, a no-man's-land for late crystallizing selectees.

3. A rehearing should be granted, or perhaps some or all should be remanded for consideration in the light of the decisions of the last fifteen months.

Respectfully,

J. B. TIETZ
Attorney for Petitioners

DATED: June 7, 1971

2. *Billings* v. *Truesdell*, 321 U.S. 542 (1944).

CERTIFICATE OF COUNSEL

This Petition for Rehearing is filed in good faith and not for the purpose of delay.

J. B. TIETZ
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